

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DARREN HEYMAN.

**Plaintiff,**

V.

Case No. 2:15-cv-1228-RFB-GWF

ORDER

STATE OF NEVADA EX REL. BOARD OF  
REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION ON BEHALF OF  
UNIVERSITY OF NEVADA, LAS VEGAS,  
et al.,

### Defendants.

This matter is before the Court on Defendant Montgomery's Memorandum of Attorney's Fees (ECF No. 373), filed on July 2, 2018. Plaintiff filed his Response (ECF No. 384) on July 16, 2018. Defendant filed her Reply (ECF No. 385) on July 20, 2018. Also before the Court is Plaintiff's Motion to Strike (ECF No. 391), filed on July 31, 2018.

## BACKGROUND

On April 3, 2018, Defendant Montgomery filed her motion for contempt against Plaintiff for failing to comply with this Court’s Order instructing him to provide a HIPAA authorization to Defendant’s counsel to obtain medical records. ECF No. 333. On June 18, 2018, the Court granted Defendant’s motion for contempt and sanctioned Plaintiff in the amount of Defendant Montgomery’s reasonable attorney’s fees and costs incurred in preparing and filing her motion for contempt. *See* ECF No. 362. The Court instructed Defendant to file and serve a memorandum, supported by affidavit of counsel, establishing the amount of attorneys’ fees and costs incurred no later than July 2, 2018 and the Court instructed Plaintiff to file his responsive memorandum no later than July 16, 2018. Plaintiff requests that the Court strike Defendant’s

Reply (ECF No. 385) because the Court did not authorize Defendant to file a reply and Defendant did not request leave to file a reply.

## **DISCUSSION**

The Supreme Court has held that reasonable attorney fees must “be calculated according to the prevailing market rates in the relevant community,” considering the fees charged by “lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when determining fee awards. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must calculate the lodestar amount “by taking the number of hours reasonably expended on the litigation and multiplying it by a reasonable hourly rate.” *Id.* Furthermore, other factors should be taken into consideration such as special skill, experience of counsel, and the results obtained. *Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). “The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed . . . [w]here the documentation of hours is inadequate, the district court may reduce the award accordingly.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Second, the Court “may adjust the lodestar, [only on rare and exceptional occasions], upward or downward using a multiplier based on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

Defendant Montgomery requests attorney's fees in the amount of \$1,408.00 for work performed in preparing her motion for contempt. The amount is based on work performed by Brianna Smith, Esq., Adele Karoum, Esq., and James Beckstrom, Esq. at an hourly rate of \$160.00, which is the contract rate agreed upon between Defendant and her counsel. After reviewing, Defendant's counsel's affidavit and itemized billing entries, the Court finds that 8.8 hours in attorney labor at an hourly rate of \$160.00 to prepare Defendant's motion for contempt and for labor related to such motion is reasonable. As a result, the Court will award Defendant Montgomery attorney's fees in the amount of \$1,408.00. The Court does not consider Defendant's Reply to be a supplemental filing and denies Plaintiff's request to strike it.

Accordingly,

1           **IT IS HEREBY ORDERED** that Plaintiff shall pay the amount of \$1,408.00 to Defendant  
2 Montgomery.

3           **IT IS FURTHER ORDERED** that Plaintiff is to make the payment to Defendant  
4 Montgomery within **30 days** of the issuance of an order denying his objection (ECF No. 376) to  
5 this Court's order granting Defendant's motion for contempt.

6           Dated this 9th day of August, 2018.

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10          GEORGE FOLEY, JR.  
11          UNITED STATES MAGISTRATE JUDGE  
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